FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 411/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : April 11, 2007.

Heard Shri Kshirsagar for the appellant, and Shri Mundra for the respondent.

Appellant is the original defendant. A suit was filed by the plaintiff for a declaration that he is the owner of the suit property by virtue of sale deed dated 31/1/2001 executed in his favour by one Indirabai. The plaintiff sought possession of the suit property from the defendant. The defendant resisted the claim of the plaintiff and pleaded that the defendant was the owner of the suit property in view of the sale deed executed in favour of the defendant on 13/3/1985 by Bayabai.

The Courts, on consideration of the entire evidence on record, held that Indirabai was the owner of the suit property and had a right to sell the same to the plaintiff and, therefore, title rightly passed to the plaintiff. The Courts further held that Bayabai had no right to sell the property to the

defendant and the correction deed exh. 89 also proved the fact that Bayabai was not the owner of the suit property.

The submissions made on behalf of the appellant that the interpretation of the proved documents of sale executed in the years 2001 and 1985 would give rise to a substantial question of law, is ill-founded as it is not necessary to interpret the recitals in the two sale deeds executed in the year 1985 and 2001. The question before the Courts was as to whether the plaintiff became the owner of the suit property by virtue of the sale deed executed in the year 2001 or the defendant had a title to the suit property in view of the sale deed executed in the year 1985. The findings recorded by both the Courts are pure finding of fact and do not give rise to any substantial question of law. Provisions of Section 43 of the Transfer of Property Act would not be applicable in the instant case. More so, when there is no specific pleadings to the aforesaid effect.

For the reasons aforesaid, the second appeal is dismissed with no order as to costs.

JUDGE

RMP